

**REMARKS**

**I. INDEFINITENESS 35 U.S.C. § 112**

Claims 3, 11, 21, and 29 stand rejected under 35 U.S.C. § 112 second paragraph as allegedly indefinite. All of these claims have been canceled, thus these rejections are moot.

**II. PRIOR ART REJECTIONS**

**A. Independent claims 9 and 18, and dependent claims 10, and 12-16.**

Independent claims 9 and 18 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Funk, U.S. Patent Application Publication 2005/0171627, referred to herein as “Funk ‘627.”

With regard to the present invention, independent claims 9 and 18 recite “**data dividing means.**” At a minimum, the cited prior art does not disclose (expressly or inherently) the above recited claim element.

Anticipation under 35 U.S.C. § 102(e) requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed Cir. 1987).

The Office Action, at pages 3 and 4, makes reference to the Abstract and paragraphs 7, 9, 66, 36, 38-43, 46, 55, 82-86 and 99 of Funk ‘627 as the sections allegedly disclosing the recited data dividing means. However, Funk ‘627 merely discloses “multivariate analysis of summary data” at paragraph 66, and does not disclose or suggest “data dividing means.”

As explained in the specification, in the present invention the data dividing means operates to divide the data for respective process parameters and process steps as shown in Figure 11 block

P35, and as discussed in the specification at paragraph [0065] which states “dividing the process data for the respective process parameters and for respective steps of the process recipe.” Clearly there is no corresponding element in Funk ‘627. Moreover, such a data dividing process is not inherent in the multivariate data analysis disclosed by Funk ‘627.

Thus, independent claims 9 and 18 are not anticipated by Funk ‘627, as Funk ‘627 does not disclose or suggest each and every element of either independent claim 9 or 18, and are not obvious in view of Funk ‘627 and the cited prior art.

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as independent claim 9 is patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon (claims 10 and 12-16) are also patentable. In addition, it is respectfully submitted that the dependent claims 10 and 12-16 are patentable based on their own merits by adding novel and non-obvious features to the combination.

Thus, dependent claims 10 and 12-16 are not anticipated by Funk ‘627 and are not obvious.

### **III. CONCLUSION**

For at least the above reasons, all pending claims (9, 10, 12-16, and 18) are in condition for allowance. If there are any outstanding issues that might be resolved by an interview or an Examiner’s amendment, the Examiner is requested to call the Applicant’s attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

Michael E. Fogarty  
Registration No. 36,139

Please recognize our Customer No. 20277  
as our correspondence address.

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
(202) 756-8000 MEF/EGO:cac  
**Date: October 19, 2006**  
Facsimile: (202) 756-8087